

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:)	
)	
ERIAS A. TERRELL)	Case No. 08-13635-SSM
MONIQUE S. TERRELL)	Chapter 7
)	
Debtors)	

**MEMORANDUM OPINION AND ORDER
ADJUDGING STEPHEN C. SZAKOS IN CIVIL CONTEMPT**

A hearing was held on September 16, 2008, on the motion of Monique S. Terrell, one of the debtors in this case, to have Stephen C. Szakos held in contempt for violation of the automatic stay. Ms. Terrell was present in person and was represented by her attorney of record. Mr. Szakos, although given notice of the hearing, was not present. The court received the testimony of Ms. Terrell and of Vicky Carey, a paralegal in the office of debtor's attorney. Based on the testimony presented, the court determines that Mr. Szakos willfully violated the automatic stay and that sanctions are appropriate.

Findings of Fact

Monique S. Terrell and her husband, Erias A. Terrell, filed a joint petition in this court on June 24, 2008, for relief under chapter 7 of the Bankruptcy Code. Prior to the filing of the petition, Mr. Szakos had obtained a judgment against the debtors for unpaid rent and had sued out a wage garnishment against Ms. Terrell's employer. The return date of the garnishment summons was July 2, 2008. Prior to the filing of the bankruptcy petition, a total of \$2,700.00 had been withheld from Ms. Terrell's paychecks. (An additional \$1,600.00 was withheld

following the bankruptcy filing but was ultimately returned to the debtor by her employer).

These funds were listed on her schedule of assets and were claimed exempt under the Virginia homestead exemption, § 34-4, Code of Virginia. According to the testimony at the hearing, a timely homestead deed was filed to perfect the exemption claim.

Mr. Szakos was listed as a creditor and was mailed a notice of the commencement of the case by the court on June 27, 2008. On July 1, 2008, Ms. Carey attempted to contact Mr. Szakos by telephone to advise him of the bankruptcy filing and of the effect of the automatic stay. She was unable to speak with him personally, but a woman representing herself to be his assistant provided a fax number, and a copy of the bankruptcy petition was faxed to him. The following day, July 2, 2008—eight days after the bankruptcy petition was filed—Mr. Szakos appeared before the state court and obtained an order for payment, and the garnished funds were turned over to him. On July 18, 2008, Mr. Szakos finally returned Ms. Carey's telephone call and acknowledged that he had received the garnished funds in the amount of \$2,700.00, that he was holding them in his personal bank account, and that he would not return them. After some further discussion, he demanded that the debtor's attorney no longer contact him. The trustee filed a report of no distribution on July 22, 2008, and the present motion for sanctions was filed a week later. Attorney's fees of \$600.00 have been reasonably incurred in bringing this matter before the court.

Conclusions of Law and Discussion

The filing of a bankruptcy petition creates a broad stay of creditor activity, including the continuation of court proceedings against the debtor and the enforcement, against the debtor or against property of the estate, of a judgment obtained prior to the bankruptcy. § 362(a)(1) and

(2), Bankruptcy Code. The automatic stay is effective even as to parties who had no notice of the bankruptcy filing. *In re James*, 120 B.R. 802, 814 (E.D. Pa. 1990), *aff'd* 940 F.2d 46 (3rd Cir. 1991). A violation of the automatic stay may be redressed by the bankruptcy court under its civil contempt powers. § 105(a), Bankruptcy Code; *Burd v. Walters (In re Walters)*, 868 F.2d 665 (4th Cir. 1989). Additionally, an individual injured by a willful violation of the automatic stay has a statutory claim for the recovery of compensatory and punitive damages and reasonable attorney's fees. § 362(k), Bankruptcy Code; *Budget Serv. Co. v. Better Homes of Va.*, 804 F.2d 289 (4th Cir.1986).

A violation of the stay is willful if (1) the creditor knows of the bankruptcy and (2) intentionally undertakes an action that violates the stay, even if the creditor is not aware that the stay applies to the action. *In re Peterkin*, 102 B.R. 50, 53-54 (Bankr. E.D. N.C. 1989). Put another way, ignorance of the legal effect of the automatic stay is no excuse. Mr. Szakos may have genuinely believed he was free to appear in court and obtain an order for payment of the garnished funds because they had been withheld from the debtor's pay prior to the bankruptcy filing. That, however, is simply not a correct statement of the law: the funds were protected by the automatic stay regardless of when they were withheld, so long as an order for payment had not been entered prior to the bankruptcy filing. Because Mr. Szakos knew of the bankruptcy filing and intentionally took possession of the garnished funds (and even more egregiously, then refused to return them) his actions constitute a willful violation of the automatic stay whatever his subjective belief concerning the propriety of his action.

There remains the question of an appropriate sanction. Civil contempt is remedial and coercive in nature, unlike criminal contempt, the purpose of which is to punish. Sanctions for

civil contempt sanctions may be compensatory or coercive, or both. *Keene Corp. v. Acstar Ins. Co. (In re Keene Corp.)*, 168 B.R. 285, 288 (Bankr.S.D.N.Y. 1994). A compensatory sanction, as the name implies, “attempts to indemnify the injured party for the damage caused by the contempt.” *Id.* Coercive sanctions, such as fines or imprisonment, seek to compel compliance with the court’s order. *Id.* Under the circumstances of this case, the court concludes that both forms of sanctions are appropriate.

ORDER

For the foregoing reasons, it is

ADJUDGED, ORDERED AND DECREED:

1. Stephen C. Szakos is adjudged in civil contempt for having willfully violated the automatic stay by requesting an order for payment of, and obtaining turnover of, garnished wages.
2. Stephen C. Szakos shall, not later than **20 days** after the entry of this order, pay **\$3,300.00** to the debtor, in care of her attorney, as compensatory sanctions. Upon such payment, Stephen C. Szakos shall stand purged of his contempt.
3. If timely payment of the adjudged compensatory sanctions is not made, a fine of **\$500.00 per week**, payable to the clerk of this court, is imposed for each full week, beginning the 21st day after entry of this order, that the compensatory sanctions remain unpaid. Upon the filing of an affidavit by the debtor, with a copy to Mr. Szakos, stating that the compensatory sanctions have not been paid, and upon the expiration of five days from service of the affidavit, the court may enter a money judgment in favor of the United States of America for the accrued fines and may also enter a money judgment in favor of the debtor for the amount of the

compensatory sanctions, together with interest from the date of this order at the rate specified in 28 U.S.C. § 1961, until paid, for which execution may issue.

4. Mr. Szakos is advised that an appeal lies from this order to the United States District Court for the Eastern District of Virginia. Except as provided in Rules 8002(b) and (c), Federal Rules of Bankruptcy Procedure, a notice of appeal must be filed with the clerk of this court within **10 days** of the entry of this order. The filing fee for a notice of appeal is \$255.00.

5. The clerk will mail a copy of this order, or give electronic notice of its entry, to the parties listed below.

Date: _____
Alexandria, Virginia

Stephen S. Mitchell
United States Bankruptcy Judge

Copies to:

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